



**COMPETITION COMMISSION OF INDIA**

**Case No. 88 of 2016**

**In Re:**

**Sri Rama Agri Genetics (India) Private Limited  
No. 11-68, Gr Floors 2, Siddeswara Apartments,  
Krishna Nagar, Kurnool - 518002, Andhra Pradesh**

**Informant**

**And**

**Mahyco Monsanto Biotech India Limited  
Ahura Centre, B wing, 5<sup>th</sup> Floor,  
96, Mahakali Caves Road, Andheri (East),  
Mumbai-400093**

**Opposite Party - 1**

**Monsanto Holdings Private Limited  
Ahura Centre, 5<sup>th</sup> Floor,  
96, Mahakali Caves Road, Andheri (East),  
Mumbai-400093**

**Opposite Party - 2**

**Monsanto Company, USA  
800 North Lindbergh Blvd.,  
St. Louis, Missouri, USA**

**Opposite Party – 3**

**Maharashtra Hybrid Seeds Company Limited  
Resham Bhavan, IV Floor,  
78, Veer Nariman Road, Mumbai-400020**

**Opposite Party – 4**

**Monsanto Technology LLC  
800, North Lindbergh Blvd.,  
St. Louis, Missouri-63167**

**Opposite Party – 5**

**CORAM**

**Mr. Devender Kumar Sikri  
Chairperson**

**Mr. S. L. Bunker  
Member**

**Mr. Sudhir Mital  
Member**

**Mr. Augustine Peter  
Member**



**Mr. U. C. Nahta**  
**Member**



**Justice Mr. G.P. Mittal**  
**Member**

**Order under Section 26(1) of the Competition Act, 2002**

1. The information in the present case has been filed by Sri Rama Agri Genetics (India) Private Limited (hereinafter, the “**Informant**”) under Section 19(1)(a) of the Competition Act, 2002 (‘**Act**’) against Mahyco Monsanto Biotech (India) Limited (hereinafter, the “**OP-1/MMBL**”), Monsanto Holdings Private Limited (hereinafter, the “**OP-2/MHPL**”), Monsanto Company, U.S.A. (hereinafter, the “**OP-3/Monsanto**”), Maharashtra Hybrid Seeds Company Limited (hereinafter, the “**OP-4/MAHYCO**”) and Monsanto Technology LLC (hereinafter, the “**OP-5/MTL**”) alleging contravention of the provisions of Sections 3 and 4 of the Act.
2. The allegations in the present information have been made, *inter alia*, in connection with the OP Group, abusing the dominant position by imposing unfair and discriminatory conditions in the sub-license agreements through which Bt. technology is sub-licensed to the seed manufacturing companies in India; charging unfair trait value; limiting scientific development relating to Bt. cotton technology as well as Bt. cotton seeds and denial of market access and leveraging their dominant position in Bt. cotton technology market for expanding their presence in Bt. cotton seeds market. The Informant has further alleged that the OP Group has entered into exclusive supply agreement, refused to deal with Indian seed manufacturers and reserved the right to fix price of seeds in certain circumstances, which according to the Informant is in contravention of provisions of Section 3(4) of the Act.
3. The Commission directed the Director General (DG) to cause an investigation into the matters *vide* its majority order dated 10<sup>th</sup> February 2016, passed under Section 26 (1) of the Act in Reference Case No. 2 of 2015 and Case No. 107 of 2015. Subsequently, taking into consideration the substantial similarity in the issues and allegations, the Commission, *vide* its order dated 18<sup>th</sup> February 2016, clubbed Case No. 03 of 2016, Case No. 10 of 2016 and Reference Case No.



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01/2016 along with Reference Case No. 2 of 2015 and Case No. 107 of 2015. Further, *vide* its order dated 09<sup>th</sup> June, 2016, the Commission clubbed three other cases namely Case No. 37 of 2016, Case No.38 of 2016 and Case No.39 of 2016 with Reference Case No. 2 of 2015 and Case No.107 of 2015. Subsequently, *vide* order dated 21<sup>st</sup> September, 2016, the Commission clubbed Case No. 36 of 2016 with the earlier cases. All these cases are presently pending before the DG for investigation.

4. The Commission notes that most of the issues and allegations raised in the instant case are also substantially similar to the aforesaid cases. However, in the instant case, the Informant has also submitted that OPs have been claiming that the Bollgard II technology is patented in India and it has been sub-licensed to various Indian seed companies. However, as per the Patents Act, 1970 (hereinafter, the “**Patents Act**”), patent rights do not exist in genetically modified plants and seeds as the Patents Act does not allow patenting of plants, plant varieties and seeds. Therefore, the appropriate statute for claiming benefit sharing by a person (claimant), in case a new variety has been developed using genetic material belonging to such claimant is the Protection of Plant Varieties and Farmers' Right Act, 2001 (hereinafter, the “**PPVFR Act**”) only. The Informant has alleged that OPs never licensed this technology *i.e.* the gene synthesis or process of insertion of the gene into the plant to the domestic seed companies.
5. In this regard, the Commission notes that under the provisions of PPVFR Act, it is the Protection of Plant Varieties and Farmers' Rights Authority established under PPVFR Act which determines the amount of the benefit sharing, if any, for which the claimant is entitled. For this purpose, the said Authority is required to take into consideration the extent and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed and the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed. On the other hand under Patents Act, the patentee decides the royalty for licensing his technology. However, for examining the present matter, it is not required to determine this particular aspect as to whether OPs have patent over Bt. Technology or they are covered under PPVFR Act at this stage.



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6. The Commission observes that the direction to the DG in Reference Case No. 2 of 2015 and Case No. 107 of 2015 to cause investigation into the matter are broad enough to cover the aforesaid issues brought out by the Informant in the instant matter. Considering the substantial similarity of the core allegations in the instant information and scope of directions given in the earlier cases referred, in exercise of the powers conferred under *proviso* to Section 26(1) of the Act read with Regulation 27 of the Competition Commission of India (General) Regulations, 2009, the Commission decides to club the present case with Reference Case No. 2 of 2015 and Case No. 107 of 2015. The DG shall investigate the instant case along with the above mentioned cases.
7. The Secretary is directed to communicate this order to the DG along with the copy of the information, accordingly.

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

**Sd/-**  
**(Sudhir Mital)**  
**Member**

**Sd/-**  
**(Augustine Peter)**  
**Member**

**Sd/-**  
**(U. C. Nahta)**  
**Member**

**Sd/-**  
**(Justice G. P. Mittal)**  
**Member**

**New Delhi**

**Dated: 14/03/2017**